

Honorable Ricardo S. Martinez
Noted for Consideration
Friday, April 30, 2010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTIE BOWERS,

Plaintiff,

vs.

**ROBIN KLETKE and ROBIN COHEN,
husband and wife and the marital
community composed thereof,**

Defendants.

NO. C08-1768RSM

**PLAINTIFF'S MOTION TO RESET
THE TRIAL DATE AND EXTEND
THE DATE FOR COMPLETION
OF DISCOVERY AND OTHER
SUBSEQUENT DATES**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff, Christie Bowers, respectfully moves the Court to reset the trial date and extend the date for completion of discovery and other subsequent dates, as previously agreed by the Defendants.

II. FACTUAL STATEMENT

After joining this case and filing a Notice of Appearance, on February 23, 2010 (Dkt. # 48), Mark Walters, counsel for Plaintiff, served Gregory Murphy, prior defense counsel, a Notice of Deposition of Robin Kletke, a Notice of Deposition of Robin Cohen. (Declaration of Mark Walters in Support of Plaintiff's Motion to Reset the Trial Date and Extend the Date for Completion of Discovery and Other Subsequent Dates, ¶ 3; Dkt. # 51). These depositions were schedule to occur **before** the discovery cutoff date. (See Declaration of Mark Walters in Support of Plaintiff's Opposition to Defendants' Motion for Sanctions and Exhibits 2 and 3 attached to this previous declaration; Dkt. #51). Mr. Walters also served a Subpoena for Deposition and Notice of FRCP 30(b)(6) Deposition on SonoSite, Inc., and this deposition was also scheduled to occur **before** the discovery cutoff date. (Declaration of Mark Walters in Support of Plaintiff's Opposition to Defendants' Motion for Sanctions and Exhibits 4 and 5 attached to this previous declaration; Dkt. #51).

A. The Defendants Previously Asked the Court to Reset the Trial Date and Extend the Date for Completion of Discovery and Other Subsequent Dates.

At the time that this discovery was served, the Defendants' Motion for Sanctions to dismiss the case was pending before this Court, and defense counsel filed a Motion to Stay Discovery pending the Court's ruling on the Defendants' Motion for Sanctions. (Dkt. # 54 and Dkt # 55). In their Motion to Stay Discovery, the Defendants, through their attorney and speaking agent, stated:

. . . . the Defendants respectfully request that the court stay all further discovery in this case including the depositions of the Defendants, and quash the subpoena to Sonosite, pending the decision of the court on Defendants' Motion for Sanctions.

1 In the event that the court denies Defendants' Motion for Sanctions,
2 **Defendants request that the court reset the trial date and extend the**
3 **date for completion of discovery and other subsequent dates."**

4 (Dkt. # 54; bold emphasis added).

5 Plaintiff promptly responded to the Defense Motion to Stay Discovery and
6 indicated that she did not oppose the Motion to Stay Discovery, "provided the Court
7 allows Plaintiff to take the depositions of both Defendants and Sonosite, Inc. beyond
8 the discovery cutoff date in the event the Court denies the Defendant's Motion for
9 Sanctions." (Dkt # 56).

10 On March 1, 2010, the Court entered its Order Granting in Part and Denying in
11 Part Defendants' Motion for Sanctions; Striking Motion to Stay Discovery As Moot and
12 Directing the Parties to File a Status Report. (Dkt. # 59). In this Order, the Court
13 concluded that the Defendants' Motion to Stay was moot because "Plaintiff agreed to
14 stay discovery so long as she would have an opportunity to take the depositions of
15 both Defendants and SonoSite, Inc. beyond the discovery cutoff date." (Dkt. # 59, at
16 pg. 7, fn. 4).

17 On March 29, 2010, Plaintiff counsel and the now *pro se* Defendants filed a
18 Second Joint Status Report. (Dkt. # 77). The Second Joint Status Report indicated a
19 notable difference with respect to discovery. (See Dkt. # 77). Ignoring their prior
20 position to reset the Case Scheduling Order during the Motion to Stay Discovery, the
21 Defendants took the position that the discovery phase is over and that discovery
22 should remain closed:
23
24

25 The discovery phase of this case has been in effect for almost 16 months
26 and is now essentially over. The deadline for discovery motions and the
discovery deadline have passed. The only remaining potential activity
appears to be depositions.

Defendants contend that adequate interrogatory answers and requests for production are still outstanding, and now have been informed that answers to critical questions will not be produced. Due to the lack of adequate discovery responses, defendants contend that discovery should remain closed and the only date extended should be the Dispositive Motion Deadline and any subsequent dates as needed.

(Dkt. 77; § I(A) at pg. 2)

On the other hand, Mr. Walters indicated in the Second Joint Status Report that the Plaintiff still wanted, **at a minimum**, to take the Defendants' depositions and a FRCP 30(b)(6) deposition of SonoSite, Inc. (See Dkt. # 77; § II(F)(3) at pg. 8 and § II(G) at pg. 9). Mr. Walters also stated that the "Plaintiff is willing to extend the discovery cutoff date to allow the Defendants to take depositions if they would like to do so." (Dkt. # 77; § II(F)(3) at pg. 8).

Therefore, Plaintiff asks that the Court reset the Case Scheduling Order to reflect the following deadlines:

Event	Current Deadline	Proposed Date
Trial Date	June 21, 2010 at 9:00 am	September 20, 2010 at 9:00 am
Due date for trial exhibits and trial briefs	06/16/2010	09/15/2010
Pretrial conference	Scheduled by the Court	Scheduled by the Court
The deadline for filing and noting motions in limine (see CR 7(d))	05/24/2010	08/20/2010
Agreed pretrial order due date	06/09/2010	09/10/2010
Mediation Date	05/07/2010	09/06/2010
Dispositive Motion filing and	03/05/2010	08/27/2010

noting deadline (see CR 7(d))		
Discovery Cutoff Date	02/19/2010	07/02/2010
Discovery Motion filing and noting deadline	01/26/2010	07/02/2010

III. AUTHORITY AND ARGUMENT

FRCP 16(b)(4) provides that a case “schedule may be modified only for good cause and with the judge's consent.” Here, good cause exists to reset the deadlines in the Case Scheduling Order because the Defendants through their counsel previously asked the Court to **“reset the trial date and extend the date for completion of discovery and other subsequent dates.”** (Dkt. # 54; bold emphasis added). This statement was made on behalf of the Defendants by their attorney acting as their speaking agent within the scope of his employment. Therefore, the Defendants, as the principals, are bound by their attorney agent’s statement. The “principal [is] bound by admissions made while speaking on a subject within the scope of his employment.” Griffiths v. Big Bear Stores, 55 Wash.2d 243, 347 P.2d 532 (1959). At a minimum, the Court should find that good cause exists to reset the discovery cutoff date to allow the plaintiff to take the Defendants’ depositions and a FRCP 30(b)(6) deposition of SonoSite, Inc., as noted in footnote 4 in its March 1, 2010 Order. (Dkt. # 59). Good cause clearly exists to allow this extension because the Plaintiff’s agreement on this point led the Court to conclude that the Defendants’ Motion to Extend Discovery was moot. (See Dkt. # 59, at pg. 7, fn. 4).

The Court should also find that good cause exists to reset the Case Scheduling Order because the failings of Plaintiff’s previous attorney interfered with her access to

1 justice and her ability to adequately present her case to this Court. Plaintiff is not
2 asking for the right to bring an expert witness, she is only asking that the Court allow
3 her additional time to allow her new attorney to develop this case for trial, and engage
4 in motion practice to narrow the issues for trial. Good cause to extend the Case
5 Scheduling Order exists because doing so may result in the conservation of judicial
6 resources.

7
8 The Court should also find that good cause exists to reopen discovery and allow
9 the parties additional time to engage in motion practice because this could help the
10 parties reach an out-of-court resolution of this matter. For example, if either party
11 concludes that the facts developed in discovery, and positions solidified via motion
12 practice, support the other's case, there is a reasonable chance that the parties may
13 resolve their differences without the need for a trial.
14

15 IV. CONCLUSION AND REQUEST FOR RELIEF

16 The troubled procedural history on this case will all but certainly lead to a
17 difficult trial because Plaintiff's previous counsel went AWOL on his client. The Plaintiff
18 had difficulty finding new counsel to accept her case, which took time, and the
19 Defendants are now proceeding *pro se*. The parties in this case need time to explore
20 and develop their positions in discovery and motion practice. On balance, the
21 proposed schedule is fair to all parties.
22

23 The Plaintiff respectfully asks the Court to reset the Case Scheduling Order by
24 roughly 3 months so the parties can engage in reasonable discovery and engage in
25 motion practice. The Plaintiff asks the Court to reset the Case Scheduling Order to
26 reflect the following deadlines:

Event	Current Deadline	Proposed Dates
Trial Date	June 21, 2010 at 9:00 am	September 20, 2010 at 9:00 am
Due date for trial exhibits and trial briefs	06/16/2010	09/15/2010
Pretrial conference	Scheduled by the Court	Scheduled by the Court
The deadline for filing and noting motions in limine (see CR 7(d))	05/24/2010	08/20/2010
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Discovery Cutoff Date	02/19/2010	07/02/2010
Discovery Motion filing and noting deadline	01/26/2010	07/02/2010

Dated this 13th day of April, 2010.

WALTERS LAW FIRM PLLC



Mark Walters, WSBA 25537
Attorney for Plaintiff, Christie Bowers

CERTIFICATE OF SERVICE

I hereby certify that on this 13th of March, 2010, I electronically filed (a) PLAINTIFF'S MOTION TO RESET THE TRIAL DATE AND EXTEND THE DATE FOR COMPLETION OF DISCOVERY AND OTHER SUBSEQUENT DATES; and (b) [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO RESET THE TRIAL DATE AND EXTEND THE DATE FOR COMPLETION OF DISCOVERY AND OTHER SUBSEQUENT DATES with the Clerk of the Court using the CM/EFC system which will send notification of such filing to the following:

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Dated: April 13, 2010



Mark Walters